IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9803 of 2000

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VADODARA MUNICIPAL CORPORATION - Petitioner(s)

Versus

USHABEN JASHWANTLAL SONI C/O GUJARAT MAZDOOR UNION - Respondent(s)

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Appearance :

MR PRANAV G DESAI for Petitioner No(s).: 1.

RULE SERVED for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 26/07/2005

ORAL JUDGMENT

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1.0 The petitioner has challenged the award dated 16.06.1999 passed by the Industrial Tribunal, Vadodara,

in Reference (IT) No.258 of 1995, whereby the Tribunal has granted benefit in favour of the respondent from the year 1985 and had also directed to treat the respondent in the cadre of Filed Supervisor from 1985.

2.0 The brief facts of the case are that on 12.02.1985 the Municipal Commissioner of the petitioner had granted permission for appointing the respondent herein as budlee Sweeper. On 20.11.1985, the respondent was transferred from the Birth - Death Department as Sweeper to the Sanitary Ward Department as Sweeper vide order dated 20.11.1985. Thereafter, the respondent raised a dispute before the Tribunal claiming the benefits of the grade of Filed Supervisor from the date she was appointed as such. The Tribunal, vide impugned order, passed the aforesaid directions. Hence, this petition.

3.0 Mr.P G Desai learned advocate for the petitioner has contended that the respondent was not qualified for the said Post, but, only with a view to see that she does not suffer physical hardship on account of her physical inability to do the work of a Sweeper, she was given the table work.

3.1 Mr. Desai has further contended that though the

cause of action had arised in the year 1981, the reference in question was preferred in the year 1995 and in spite of that the Tribunal has granted benefit with effect from 01.01.1985. He has, therefore, submitted that the Tribunal has committed serious error by passing the impugned award, and therefore, the same is required to be quashed and set aside.

4.0 I have heard learned counsel for the parties and perused the documents placed on record. The contention raised by Mr. Desai regarding the educational qualification of the respondent has been dealt with by the Tribunal and since the respondent was working on the said Post, the benefit of that cadre was given to her.

4.1 However, the contention regarding the effect of the benefit is required to be considered from the date of the reference. In my opinion, the Tribunal has lost sight of the fact that the reference in question was preferred after almost fourteen years from the date of the cause of action. Hence, the impugned order of the Tribunal is illegal and perverse and deserves to be quashed and set aside.

5.0 For the foregoing reasons, this petition is partly

allowed. The impugned order of the Tribunal is modified to the extent that the benefit of the cadre shall be given from the date of the reference and not from the year 1985 as directed by the Tribunal. The remaining part of the order of the Tribunal shall remain as it is. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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